

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Case No. 4:19-cv-00415
ALEXANDRU BITTNER,)
Defendant.) Filed Electronically

EXPEDITED JOINT MOTION FOR MODIFICATION OF THE SCHEDULING ORDER

Defendant, Alexandru Bittner and Plaintiff the United States of America (collectively, the “Parties”), by their undersigned counsel, respectfully move the Court to extend the July 1, 2020 deadline to file the joint final pretrial order and motions in limine, as well as the July 17, 2020 deadline to respond to motions in limine, objections to witnesses, deposition extracts, and exhibit lists by 30 days, and to reschedule the final pre-trial conference. In support thereof, the Parties state as follows:

1. Under the current scheduling order, (Dkt. #9), the Parties must file a joint final pretrial order and motions in limine on July 1, 2020. Further, the parties must respond to motions in limine as well as file objections to witnesses, deposition extracts, and exhibit lists on July 17, 2020. The Parties wish to extend the above listed deadlines by 30 days.

2. The Memorandum Opinion and Order, (Dkt. #75), recently issued by the Court resolved many of the issues in the case, however, some significant issues still remain.

3. Specifically, whether Mr. Bittner had reasonable cause for his failure to timely file an FBAR for the year 2011 was not included in Plaintiff’s Motions for Summary Judgment. The facts surrounding Mr. Bittner’s reasonable cause defense for 2011 are much different than

the years 2007-2010. In addition, the following defenses raised in Mr. Bittner's amended answer still remain: (1) whether the IRS's FBAR penalties assessed against Bittner were arbitrary and capricious violating his right to be treated like similarly situated taxpayers, a right to due process or a right to equal protection under the law; (2) whether the IRS acted in violation of the APA; (3) whether the assessed FBAR penalties constitute an improper criminal sanction; and (4) whether the assessed FBAR penalties constitute unconscionable punishment.

4. The Court determined that Mr. Bittner's Eighth Amendment argument is moot. The Court stated that Its "understanding of Mr. Bittner's argument on Eighth Amendment grounds is that it is premised on the Court finding the Government's \$3 million penalty assessment proper. In view of the Court's interpretation of the non-willful FBAR penalty, however, the Court need not address the merits of Mr. Bittner's Eighth Amendment argument, as it is now moot." Mr. Bittner's defenses of whether the assessed FBAR penalties constitute an improper criminal sanction (Sixth), and whether the assessed FBAR penalties constitute unconscionable punishment (Seventh), are premised on the Court finding the Government's \$3,000,000 penalty assessment proper. Thus, it is unclear whether these defenses are also moot.

5. Further, one of the anticipated jury issues was to determine the correct number of foreign accounts that Defendant was required to report on his Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," for the 2007, 2008, 2009, 2010 and 2011 years. However, in light of the Court's ruling that the penalty is not based on the number of accounts, it is unclear whether this issue will need to be tried to a jury.

6. As a result, the Parties need additional time to evaluate their respective positions, determine what issues would remain for trial and how the case should move forward.

WHEREFORE, the Parties respectfully requests the Court to grant this Motion.

Dated: June 30, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 30, 2020, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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